

REMARKS

The Final Action of December 31, 2007 repeated the two grounds of rejection set forth in the Official Action of July 10, 2007, namely: (1) under 35 U.S.C. 112, second paragraph, as being indefinite; and (2) under 35 U.S.C. 102(b) as being clearly anticipated by Bunzl U.S. Patent 5,634,295, particularly Fig. 7. Both grounds of rejection were fully answered in the response of September 27, 2007 but apparently applicant's arguments were not deemed by the Examiner to be persuasive. Applicant respectfully disagrees with this conclusion by the Examiner, but believes that an appeal can be avoided if the Examiner will reconsider the rejections in the light of the following additional remarks with respect to both rejections.

Re: Rejection under 35 U.S.C. 112, second paragraph

All Claims 1–21 were rejected as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention, as required under 35 U.S.C. 112, second paragraph. In this rejection, the Examiner felt that a number of recitations including the definite article “the” lacked clear antecedent basis; that the phraseology “and/or” is indefinite per se; and that the phraseology “along an effective straight line path” was not readily understood by the Examiner since a path about a revolving door is always “curved” or “slightly curved”.

As pointed out in the previous response, while the use of the definite article “the” as distinguished from the indefinite article “a” generally requires a clear antecedent for the feature followed by the definite article “the”, there are also many instances in which the recitation of “the” does not require antecedent terminology. Thus, such antecedent terminology is required in order to avoid including a feature by implication, which should

be positively recited. On the other hand, where the recitation refers to a characteristic which is obviously and inherently present in a feature positively recited, and setting forth antecedent terminology for the respective characteristic would not only be unnecessary, but would detract from the definiteness of the claim, rather than add to it.

The various recitations of “the flow” and “the outer ends” referred to by the Examiner is clearly the latter situation wherein the recitation does not involve a feature which should be positively recited rather than implyably included, but rather a characteristic which is clearly and obviously present in a feature positively recited. This is clear from the fact that if “the flow of traffic” were changed to — —traffic flow — —, and if “the outer end” were changed to — — outer ends — —, in the various recitations objected to by the Examiner, the meaning would be clearly exactly the same.

The same is true with respect to the phraseology “and/or”. In Claim 3, this phraseology in the recitation “tracks fixed to overlie and/or underlie said passageway”. The “and/or” phraseology used in this recitation clearly brings out that the three alternatives involved are all equivalent. Thus, since the “and/or” phraseology clearly means that all three alternatives are equivalent, to avoid this objection a “Markush grouping” could be used, wherein the three alternatives are expressly recited, which clearly would not add to the definiteness of the claim, but rather detract from its definiteness. However, as pointed out in the previous response, many decisions of the USPTO Board of Appeals have allowed such clear and definite alternative language to be used, when the alternatives are clearly equivalent, rather than requiring the applicant to use such convoluted language as in a “Markush grouping”, or as used in a recitation of “n

elements, wherein n is a whole integer of more than one and less than 4”, rather than using the alternative language of “two or three” of such elements.

As indicated above, applicant is confident that these objections by the Examiner would not be sustained by the USPTO Board of Appeals, but since the applicant feels that such an appeal would waste the time of the parties involved (the Examiner, the applicant and the Board of Appeals), the above-proposed amendments to the claims would avoid the objections made by the Examiner using other clearly equivalent language. It is trusted, therefore, that the Examiner will permit these amendments.

The Examiner also objected to the phraseology “along an effective straight-line path”“a path about a revolving door” cannot be “anything but slightly curved or curved”. As pointed out in a previous response, the language was included in the main independent claims to serve as a reference for the recitations in the last passage of the respective independent claim defining the novelty over the Bunzl U.S. Patent 5,634,295, cited by the Examiner. Thus, as set forth in the previous response, the invention of the present application, particularly as defined in main independent Claim 1, relates to a novel door assembly “which can be accommodated within the passageway in a minimum of space both laterally of the passageway, as well as forwardly and rearwardly of the passageway” (Paragraph 0005). The door assembly described in the Bunzl, however, is for a different purpose, namely “for unblocking a wide passageway in the event of panic or for transporting goods through the revolving door” (Column 1, lines 41–43). The variable-length door wings described in that patent are guided to follow a circular path (e.g., Fig. 4), or a rectangular path (e.g., Fig. 7), which is to be sharply distinguished from the novel feature of the present invention, as defined in

the last passage of Claim 1, wherein the inner panels assume an outermost position when a respective door section is located perpendicularly to the flow of traffic, and an innermost position wherein the respective door section is located parallel to the flow of traffic.

Applicant agrees that the flow of traffic through a revolving door is slightly curved to accommodate the revolving door and that is why the objected-to phraseology referred to “an effective” straight-line path. It is believed that such a recitation was clear and definite, particularly in the light of applicant’s disclosure.

Nevertheless, since applicant feels that this is clearly not a matter which should be resolved by the USPTO Board of Appeals, the above-proposed amendments avoid this objection by the Examiner by referring, not to the “effective straight-line path” through the passageway, but rather by referring to the “common straight-line axis” of the “entry and exit ends” of this passageway. Thus, the novel features as defined in the last paragraph of Claim 1 (as well as the other independent claims) refers to this “common straight line axis” of the entry and exit ends of the passageway, rather than to the “effective straight-line path” through the passageway. This newly-introduced language clearly does not involve any question of “new matter”, since it is clearly and non-ambiguously implicit in the original disclosure, particularly in Figs. 3–8 of the drawings.

The proposed amendments also amend the pertinent portions of the specification to provide a clear and antecedent basis for this language used in the claims.

The newly-proposed language, as discussed above, clearly does not introduce any new issues or require any further search, and therefore it is respectfully requested that the Examiner enter this amendments as placing the application in condition for allowance.

Since the application is under Final, an early reply is particularly solicited.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Martin D. Moynihan".

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